

WILMERHALE

June 17, 2021

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VIA ECF

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Honorable Lewis A. Kaplan
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *In re Customs and Tax Administration of the Kingdom of Denmark*
(*Skatteforvaltningen*) Tax Refund Scheme Litigation, No. 18-md-02865

Dear Judge Kaplan:

Defendants write to respond to the letter SKAT filed last night via email to Chambers. That submission is attached hereto as Exhibit A.

SKAT purports to “update the Court” regarding Defendants’ motion to compel, which Defendants renewed through their response to SKAT’s evidentiary filing. ECF Nos. 601, 618. SKAT notes that the Danish Commission of Inquiry on SKAT has released a “Hearing Protocol” that includes “11,665 pages of documents and testimony.” To be clear, the Commission issued a “partial report” that contains summaries of testimony provided to the Commission, but does not include any transcripts, any assessment of that testimony, or any findings. And while it is true that the Commission released a few thousand pages of documents in addition to its summaries of testimony, that is no substitute for the *114,000 documents* SKAT provided to the Commission, let alone their production by SKAT in this litigation. Indeed, the Danish Ministry of Justice advised that “the Commission of Inquiry into SKAT has omitted a number of pieces of information from the interim report” and has, “at the request of the Danish Tax Agency, exempted a number of information from publication.”¹

The Commission has signaled that it will in the future release additional information, including “a coherent presentation,” its “legal assessments,” and “whether there are grounds for the public sector seeking to hold someone accountable.”² It is not clear whether those additional reports will contain other documents SKAT provided to the Commission. But with fact discovery closing on June 30—a fact SKAT has highlighted for this Court no fewer than five times (ECF Nos. 553, 566, 587, 605; May 17, 2021 Letter Regarding ED&F Man)—Defendants cannot wait in the hope that someday the Commission will do SKAT’s job for it.

¹ <https://www.justitsministeriet.dk/pressemeddelelse/undersogelseskommissionen-om-skat-afgiver-delberetning-om-udbyttetagen/>.

² *Id.*

WILMERHALE

June 17, 2021

Page 2

To the extent that SKAT means to suggest that the release of the Commission's partial report moots Defendants' motion, Defendants do not agree and respectfully renew their request that the Court grant their motion to compel.

Respectfully submitted,

/s/ Sharon L. McCarthy
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Kostelanetz & Fink LLP

/s/ Alan E. Schoenfeld
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Cc: All counsel of record (via ECF)